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In the Supreme Court of the United States

OCTOBER TERM, 1963

No. 115

GENERAL MOTORS CORPORATION, *Appellant*,

v.

STATE OF WASHINGTON and WILLIAM S. SCHUMACHER, CLARKE SQUIRE and A. E. HANKINS, as the Tax Commissioners of the State of Washington, *Appellees*.

ON APPEAL FROM THE SUPREME COURT OF THE STATE OF WASHINGTON

OBJECTIONS OF APPELLEES TO MOTIONS FOR LEAVE TO FILE BRIEFS OF *AMICUS CURIAE*

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STATE PRINTING PLANT OLYMPIA, WASH., 1963

In the Supreme Court of the United States

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ON APPEAL FROM THE SUPREME COURT OF THE STATE OF WASHINGTON

OBJECTIONS OF APPELLEES TO MOTIONS FOR LEAVE TO FILE BRIEFS OF *AMICUS CURIAE*

(Automobile Manufacturers Assoc. Inc.;
National Association of Manufacturers;
Electronic Industries Association;
Magazine Publishers Association Inc.,
National Coal Association, *Applicants*)

Pursuant to Rule 42(3) of the Rules of the Supreme Court of the United States, the appellees respectfully object to the motions of the several

applicants for leave to file briefs as *amicus curiae* in support of the jurisdictional statement.

Appellees' objections are directed to the motions of the following applicants:

Automobile Manufacturers Assoc. Inc.;
National Association of Manufacturers;
Electronic Industries Association;
Magazine Publishers Association Inc.,
National Coal Association.

I. APPELLEES' REASONS FOR WITHHOLDING CONSENT TO FILING OF BRIEFS OF *AMICUS CURIAE* BEFORE THE JURISDICTIONAL STATEMENT.

1. The instant litigation has been under way for ten years. The facts and questions of law have been hard fought and thoroughly briefed and researched by the two present parties to this proceeding. Counsel for General Motors are most eminent and highly qualified to argue every question of law or fact which can be said to be involved in the instant litigation.

2. Even if this case can be said, *arguendo*, to precipitate a substantial federal question, the facts here (although detailed and complex because of the magnitude and unique *modus operandi* of appellant's multi-state business operations) make it highly improbable (if not impossible) that *amicus curiae* can "* * * set forth facts or questions of law that have not been, or reasons for believing that they will not * * * be, presented by the parties, * * *" as required by Rule 42(3).

3. Appellees sincerely believe that participation of *amici curiae* before the court's consideration of the appellant's jurisdictional statement cannot and will not be of assistance to the court.

4. The burden of answering the five briefs of *amici curiae* within the time provided by Rule 16 for preparation and filing of the appellees' motion to dismiss imposes an unfair and unnecessary burden on the appellees, if not also upon the court.

II. ADDITIONAL OBJECTIONS OF APPELLEES TO THE MOTIONS OF APPLICANTS.

A. APPLICANTS HAVE FAILED TO COMPLY WITH RULE 42(3).

Rule 42(3) of the Rules of the Supreme Court of the United States provides that when consent to the filing of a brief as *amicus curiae* is refused by a party to the case, the applicant must state precisely "* * * the nature of the appellant's interest, * * * [*the*] *facts or questions of law that have not been, or reasons for believing that they will not adequately be, presented by the parties,* and their relevancy to the disposition of the case * * *". (Rule 42(3), *supra*) (Emphasis supplied.)

It is respectfully submitted than an examination of the several motions in question will disclose that none of the applicants has complied with Rule 42(3).

B. APPLICANTS MISAPPREHEND THE NATURE OF THE TAX INVOLVED AND THE FACTS OF THIS CASE.

The portions of the Washington business and occupation tax which are involved in this case have

been in effect since 1935. The Statute in question imposes a tax "* * * upon persons for the act or privilege of engaging in business activities * * * within the State of Washington." RCW 82.04.220; 82.04.270(1).[1] The constitutional validity of the tax has been litigated many times.[2]

Nevertheless, each prospective applicant has jumped to the conclusion that the tax involved in the case is a tax *on* interstate commerce, or a tax *on* interstate sales.[3]

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[1] RCW 82.04.220. "There is levied and shall be collected from every person a tax for the act or privilege of engaging in business activities. Such tax shall be measured by the application of rates against value of products, gross proceeds of sales, or gross income of the business, as the case may be."

RCW 82.04.270(1). "Upon every person except persons taxable under subsection (1) of RCW 82.04.260 engaging within this state in the business of making sales at wholesale; as to such persons the amount of tax with respect to such business shall be equal to the gross proceeds of sales of such business multiplied by the rate of one-quarter of one percent."

[2] Crown Zellerbach Corp. v. State, 53 Wn. (2d) 813, 328 P. (2d) 884, appeal dism., cert. den. 359 U.S. 531 (1958).

Field Enterprises v. State, 47 Wn. (2d) 852, 289 P. (2d) 1010, aff'md per curiam 352 U.S. 806 (1955).

B. F. Goodrich Co. v. State, 38 Wn. (2d) 663, 231 P. (2d) 325, cert. den. 342 U.S. 876 (1951).

Gwin, White & Prince v. Henneford, 305 U.S. 434 (1939).

Puget Sound Stevedoring Co. v. Tax Commission, 302 U.S. 90 (1937).

Standard Oil Co. of Cal. v. State of Washington, 57 Wn. (2d) 56, 355 P. (2d) 349, cert. den. 365 U.S. 859 (1961).

State ex rel. Stiner v. Yelle, 174 Wash. 420, 25 P. (2d) 91 (1933).

U.S. Steel Corp. v. State, 51 Wn. (2d) 224, 316 P. (2d) 1099, appeal dism. 358 U.S. 46 (1958).

Wash.-Ore. Shippers, etc. v. Schumacher, 59 Wn. (2d) 159, 367 P. (2d) 112, cert. den. 370 U.S. 937 (1962).

[3] The National Coal Association states that "the basic question involved in the present case is the power of a state to levy a tax on

III. CONCLUSION

Accordingly, appellees respectfully request the court to deny the motions of the various applicants to file briefs as *amicus curiae* in support of appellant's jurisdictional statement.

Respectfully submitted,

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the privilege of engaging in interstate commerce measured by gross receipts from interstate commerce."

The Electronic Industries Association alleges that "in connection with the sale and distribution of products of most E.I.A. members it is essential that the manufacturer provide engineering advice and service to the ultimate customer, who would be able to fit the electronic product into his own operation without advice and assistance."